

87-1875

No. _____

Supreme Court, U.S.

FILED

MAY 16 1988

JOSEPH E. SPANIOLO, JR.

CLERK

IN THE

Supreme Court of the United States

October Term, 1987

OTIS L. LEE

Petitioner,

v.

THE ALBEMARLE COUNTY, VIRGINIA

SCHOOL BOARD, et al.,

Respondents,

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
(APPENDIX)

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Suite #2
Charlottesville, Virginia 22901

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Attorney for Petitioner



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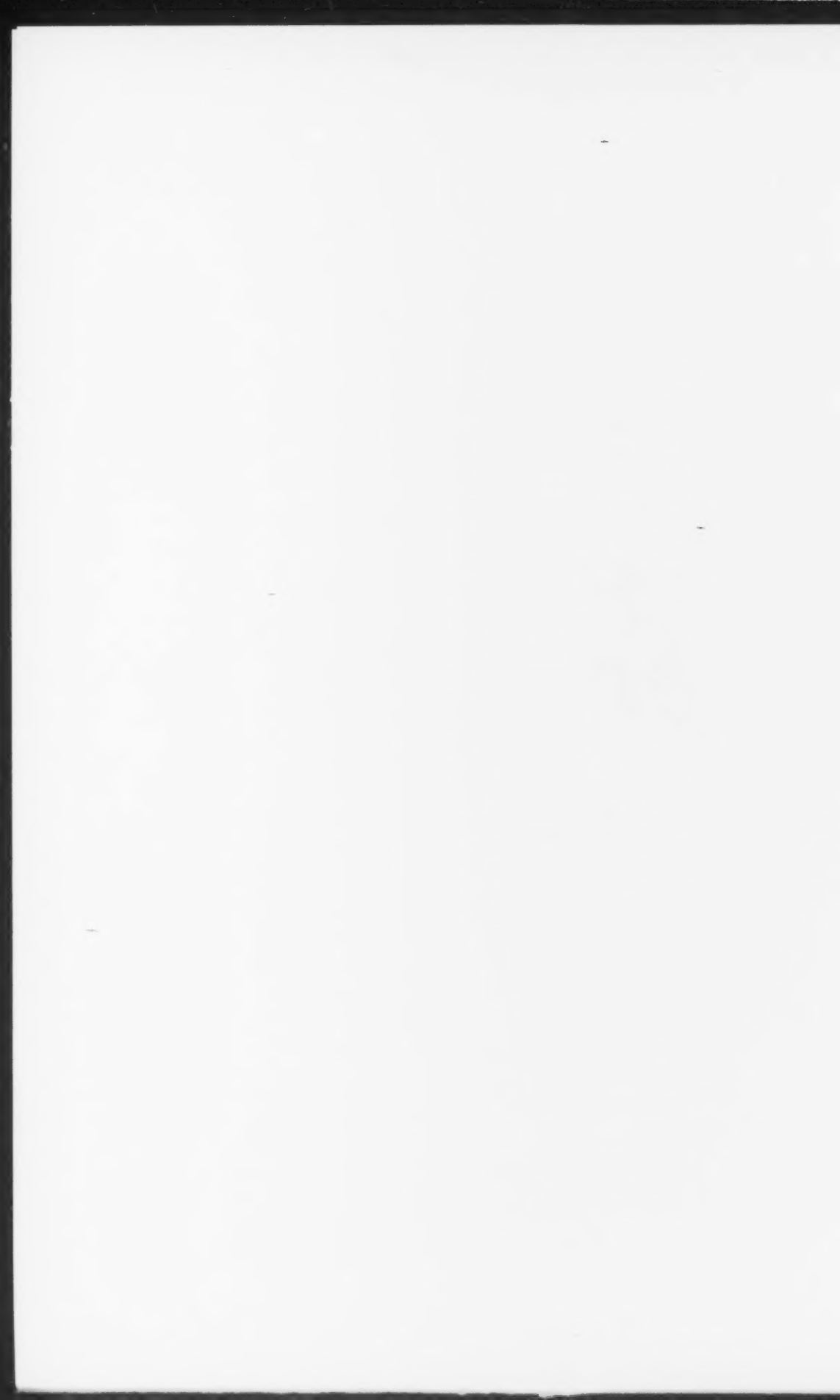


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APPENDIX A



UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 86-2182

Otis L. Lee,
Plaintiff - Appellant,

v.

Albemarle County School
Board, et al.,
Defendants - Appellees.

On Petition for Rehearing with Suggestion
for Rehearing In Banc

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court requested a poll on the suggestion for rehearing in banc, and

As the panel considered the position for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing

in banc are denied.

Entered at the direction of Judge
Hall, with the concurrence of Judge
Russell and Judge Widener.

For the Court

JOHN M. GREACEN
CLERK

United States Court of Appeals
For the Fourth Circuit
Unpublished
No. 86-2182

Otis L. Lee,
Plaintiff - Appellant

versus

Albemarle County School Board;
Carlos Y. Gutierrez, Englar M.
Feggans; Carolyn S. Gaines;
Harriet L. Scott; Wilbert T.
Lewis, Jr., Ella C. May,
Christine N. Garrison; the
Albemarle County Fact-Finding
Panel and Members, Necessary
Parties,
Defendants - Appellees

Appeal from the United States District
Court for the Western District of
Virginia, at Charlottesville. James
H. Michael, Jr., District Judge.
(CA-84-0038-C)

Appeal from the United States District
Court for the Western District of
Virginia, at Charlottesville. James
H. Michael, Jr., District Judge.
(CA-84-0038-C)

Argued: July 7, 1987
Decided: September 14, 1987

Before RUSSELL, WIDENER, and HALL, Circuit Judges.

J. Benjamin Dick (S. W. Tucker; Hill, Tucker & Marsh on brief) for Appellant; Douglas Leigh Gynn (Wharton, Aldhizer & Weaver; George R. St. John; St. John, Bowling, Payne & Lawrence; J. Randolph Parker; Tucker & Parker on brief) for Appellees.

PER CURIAM:

Otis L. Lee, a black male and a former administrative assistant to the Superintendent of the Albemarle County School Board ("the Board"), appeals an order of the district court granting summary judgment in favor of all defendants in his civil action brought pursuant to 42 U.S.C. §§ 1981, 1983 and 1985. Lee alleged that his discharge by the Board was improper and racially motivated. The district court concluded that there was no evidence of racial animus in the action taken against Lee. We affirm.

Prior to his discharge, Lee acted as chairman of the Board's Minority Task Force, which was responsible for recruiting minority applicants for teaching positions in the Albemarle County public schools. On September 22, 1982, a story appeared in a local newspaper asserting that Lee had used his position to pressure a newly-hired minority teacher into renting an apartment in a building that he owned. Following the newspaper report, Carlos Gutierrez, the Superintendent of Albemarle County Schools suspended Lee pending an investigation of the incident mentioned in the newspaper account as well as certain other allegations that Lee had abused his public position.

Following a preliminary investigation, Superintendent Gutierrez concluded that the charges against Lee had merit and recommended his dismissal

to the Board. Lee then elected a hearing before a three-person fact-finding panel as provided by Virginia Code §22-1-310. A panel was selected and four days of hearings were conducted in January and February, 1983. Lee was represented by counsel throughout the hearings.

At the conclusion of the hearings, the panel found, inter alia, that

Otis Lee conducted personal business on a regular basis during the course of his employment as Administrative Assistant to the Superintendent of the Albemarle County School Division which constituted a conflict with his official duties.

The panel further concluded that Lee's actions constituted grounds for dismissal under Virginia law.¹ After a review

¹ Educational personnel may be dismissed in Virginia for any "good or just cause." Va. Code § 22.1-307.

of the panel's findings and a transcript of the hearings, the Board voted by a vote of six to zero to discharge Lee.

Lee subsequently filed a civil action alleging that he had been dismissed in violation of his constitutional rights to procedural and substantive due process, that his discharge was racially motivated, and that Superintendent Gutierrez had conspired with members of the Board to deprive him of his civil rights. Named as defendants were the Albemarle County School Board and seven of its members individually, the fact-finding panel and all three of its members individually, Superintendent Gutierrez, and three employees of the Board who witnessed the incident described in the September 22, 1982 newspaper story.

On October 29, 1986, the district court granted summary judgment in favor of the defendants on all claims advanced

by Lee. The court concluded that the Board had established a legitimate justification for dismissing Lee and had accorded him a full and fair opportunity to be heard on the charges against him. The court also held that Lee's complaint of racial discrimination amounted to nothing more than a "bare allegation" without evidentiary support.

On appeal, Lee contends that there is a material question of fact concerning whether the Board conducted an impermissible second hearing on his pending discharge which he was not permitted to attend. Lee also argues that he established a prima facie case of racial discrimination in the Albemarle School system that precludes summary judgment on his §§ 1981, 1983 and 1985 claims.

Upon consideration of the record, briefs, and oral argument, we conclude

that appellant's contentions are utterly without merit.² Accordingly, we affirm the grant of summary judgment in this matter for the reasons expressed by the district court. Otis L. Lee v. The Albemarle School Board, et al, C/A No. 84-0038-C (W.D. Va. October 29, 1986).

AFFIRMED

² The record clearly discloses that the Board merely reviewed the extensive transcript of the fact-finding panel's hearings. There is no indication that a second hearing was conducted.

Appellant's effort to assert a prima facie case of discrimination based upon his replacement as administrative assistant by a Caudasian is also flawed. His complaint alleged discriminatory discipline. In such cases, a prima facie case requires the plaintiff to show that the disciplinary measures imposed against him were more severe than those enforced against a member of the non-protected class engaged in similar conduct. Moore v. City of Charlotte, 754 F.2d 1100 (4th Cir.), cert. denied, _____ U.S. _____, 105 S.Ct. 3489 (1985). There is no evidence in the record to support a prima facie case of discrimination under that standard.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

Otis L. Lee,
Plaintiff

v.

CIVIL ACTION
84-0038-C

The Albemarle County School
Board, et al.,
Defendants

O R D E R

JUDGE JAMES H. MICHAEL, JR.

For the reasons stated in the
accompanying Memorandum Opinion, it
is this day

ADJUDGED AND ORDERED

as follows:

1. Defendants' motion for summary
judgment shall be, and it hereby is,
granted.

2. This case shall be, and it
hereby is, dismissed and stricken from
the docket of this court.

The clerk is hereby directed to
send a certified copy of this Order,

and the accompanying Memorandum Opinion,
to all counsel of record.

ENTERED: JAMES H. MICHAEL, JR.
JUDGE

DATE: OCTOBER 29, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

Otis L. Lee,
Plaintiff

v. CIVIL ACTION NO.
84-0038-C

The Albemarle County
School Board, et al.,
Defendants

MEMORANDUM OPINION

JUDGE JAMES H. MICHAEL, JR.

Following his dismissal from his post as administrative assistant to the superintendant of the Albemarle County public schools, plaintiff filed this action under 42 U.S.C. §§ 1981 and 1983, alleging violations of his rights to due process of law and equal protection of the laws. He also charged certain defendants with conspiring to deprive him of his civil rights. This matter is now before the court on defendants' motion to dismiss under

Rule 12 (b) (6) of the Federal Rules of Civil Procedure. The parties have submitted materials outside the pleadings to support their positions, and having accepted and considered this material, the court must convert the motion to dismiss into a summary judgment motion. Accordingly, the court has analyzed the case to determine whether there is any genuine issue of material fact outstanding. Finding none, the court grants summary judgment in favor of the defendants.

I. Background

The plaintiff, Otis Lee, is a black man who was employed by the Albemarle County School Board from 1960 until his dismissal on June 29, 1983. Mr. Lee worked first as a teacher, then as a principal, and finally in 1981 was appointed administrative assistant to the superintendent of schools. In

this position he served as chairman of the Minority Task Force, which was responsible for recruiting minority applicants for teaching positions in the Albemarle County public schools. In addition to his job with the school board, Mr. Lee owned and managed several rental properties in the city of Charlottesville.

On September 22, 1982, a story appeared in the Charlottesville Daily Progress reporting that Harriette L. Scott, a newly hired black teacher, had felt pressured to rent an apartment from Mr. Lee, fearing that she would jeopardize her job if she refused to rent the apartment. Shortly afterward, Mr. Lee was suspended from his position by Superintendent Gutierrez pending an investigation into allegations that Lee had intertwined his private business affairs with his public duties for private

gain; that he used public facilities, including secretarial time and a county vehicle, for private gain; that he had conducted his private business affairs on school time; that he had improperly carried out his duties as chairman of the Minority Task Force; and that he had misrepresented the authority of his office. Based on these charges and an additional charge of lying, Superintendent Gutierrez recommended in October 1982 that the school board dismiss Lee. Lee elected a hearing before a fact-finding panel under Virginia Code §22.1-310. The panel was selected pursuant to Virginia Code §22.1-312 and held four days of hearings during January and February of 1983. Following the hearings, the fact-finding panel made the following findings of fact and recommendations:

Based on the evidence when considered as a whole, a majority of the panel finds as a fact that:

While the Minority Task Force was generally successful, Otis Lee exercised independent judgment as chairman of the Minority Task Force which was inconsistent with the proper functioning of the task force and its goals.

Based on the evidence when considered as a whole, the panel unanimously finds as facts that:

1. Otis Lee conducted personal business on a regular basis during the course of his employment as Administrative Assistant to the Superintendent of the Albemarle County School Division which constituted a conflict with his official duties.

2. The personal business activities which were conducted during working hours occurred over a period of time, were not concealed by Otis Lee, were to a greater or lesser degree known to officials in the Albemarle County School Division and were not specifically addressed as they occurred.

...

A majority of the panel finds that these actions are grounds for dismissal under the law. The remaining member of the panel feels that certain of Mr. Lee's actions were improper but not sufficient to warrant dismissal and since the actions developed and occurred over a period of time, were to a greater or less degree known

to officials in the Albemarle County School Division and were not specifically addressed as they occurred, recommends that Otis Lee be suspended for 90 days without pay and that during these 90 days Otis Lee effectuate his retirement.

On June 28, 1983, the Albemarle County School Board passed the following motion by vote of six to zero:

Having read the complete transcript of the fact-finding hearing in the Otis L. Lee grievance procedure, and having considered the recommendations of the fact-finding panel, the board has determined:

-That Mr. Lee did intermix his private business affairs and his public responsibilities to the serious detriment of the school system, and

-That Mr. Lee did improperly hire and place at least one teacher in his position as Chairman of the Special Task Force for Minority Hiring which greatly endangered the success of that program.

The board accepts the recommendation of the majority of the fact-finding panel and does hereby dismiss Mr. Lee.

On June 11, 1984, Mr. Lee filed this suit under 42 U.S.C. §§ 1981 and 1983. By order entered by this court

on January 11, 1985, the plaintiff was given leave to file an amended complaint. The amended complaint was filed on February 28, 1985, and the defendants filed a motion to dismiss. Prior to the court's ruling on the motion to dismiss, plaintiff sought once again to amend his complaint. By order entered by this court on July 23, 1985, the plaintiff was given leave to file a second amended complaint. The defendants again filed a motion to dismiss, which is now before the court as a motion for summary judgment.

Plaintiff names as defendants the Albemarle County School Board and seven of its members individually, the fact-finding panel and all three of its members individually, Superintendent Gutierrez, and school board employees Lewis, Gaines, and Scott. He alleges that the fact-finding panel and the

school board deprived him of his constitutional right to due process and equal protection of the law. Plaintiff also alleges that Superintendent Gutierrez, Board member Feggans, Lewis, Gaines, and Scott conspired to deprive him of his civil rights. In addition, he asks the court to take jurisdiction over his pending claims of defamation and tortious interference with contract. Plaintiff seeks a variety of declaratory and injunctive remedies as well as damages.

II. Findings of Fact and Conclusions of Law

A. Good Faith Immunity

The court notes at the outset that the members of the school board and the fact-finding panel enjoy limited good-faith immunity. In performing discretionary functions, these defendants are generally shielded from liability

for civil damages in so far as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). For the plaintiff to recover damages, therefore, there must be both a finding of a constitutional violation and a finding that the official's decision was objectively unreasonable. An inquiry into the reasonableness of the official's conduct is unnecessary in this case, however, for the plaintiff has failed to established a constitutional violation.

B. Procedural Due Process Claims

Plaintiff was represented before the fact-finding panel by two attorneys, and he freely exercised his right to examine witnesses presented by the school board and to call witnesses of his own. Nevertheless, the plaintiff alleges

procedural due process violations in two areas. First, he claims that after the fact-finding panel had made its recommendations, the school board held an additional hearing about his dismissal without giving him notice and an opportunity to appear as required by Virginia Code §22.1-313 (D). Second, he charges that both the fact-finding panel and the school board were biased against him by the actions of defendants Feggans, Gaines, Scott, Gutierrez, and Lewis.

In alleging that the school board failed to follow the procedure mandated by law, plaintiff misinterprets the applicable sections of the Virginia Code. Under Code § 22.1-310 (B), either the grievant or the school board may elect a hearing by a fact-finding panel prior to a decision by the board. If the grievant elects such a hearing,

as the plaintiff did in this case, Code § 22.1-310 (C) specifies that he has no right to a further hearing by the school board. If the school board decides to hold a further hearing, however, it must notify the grievant in writing under Code § 22.1-313 (D). It is this section which plaintiff claims was violated by the school board.

Clearly, the notice requirement of § 22.1-313 (D) would be triggered only if the school board were to hear evidence beyond the transcript, findings, and recommendations of the fact-finding panel. A contrary interpretation would grant the grievant an automatic second hearing, which Code § 22.1-310 (C) specifically forbids. In the present case, the evidence indicates that the school board considered only the transcript, findings, and recommendations of the fact-findings panel at its meeting

on June 28, 1982. This meeting of the school board to consider and act upon the recommendations of the fact-finding panel was not in itself a further hearing under the statute. Therefore, plaintiff was not entitled to notice of this meeting and the lack of notice did not violate his due process rights.

On plaintiff's charges that both the fact-finding panel and the school board were biased, the court finds no genuine issue of material fact remaining. Panel members Landin and Garrison, who constituted a majority of the panel,¹

¹ The remaining panel member, Mrs. May, was chosen by the plaintiff himself under Code §22.1-312 (A). Mrs. May concurred with the other panel members in finding that Lee's conduct of his personal business constituted a conflict with his official duties, but she disagreed with the finding concerning Lee's actions as chairman of the Minority Task Force. She also differed with the majority's recommendation of dismissal, recommending instead that the school board suspend Lee without pay
(Footnote Continued)

have submitted affidavits swearing that they wer not influenced or pressured by any person and that they considered only the evidence presented to the panel in making their recommendation to dismiss the plaintiff. Likewise, school board members Sutton, Tolbert, Strong, and Haden² have all submitted affidavits swearing that the newspaper articles did not affect their decision to dismiss Lee, that they based their decision solely on the recommendation of the fact-finding panel and the transcript of the panel hearings, and that they

(Footnote Continued)

so that he could effectuate his retirement. Va. Code §22.1-312(F) states, "The facts found and recommendations made by the panel shall be arrived at by majority vote of the panel members."

² The vote to dismiss the plaintiff was 6 to 0, with defendants Sutton, Tolbert, Strong, and Haden supplying a majority of the votes. Under Code §22.1-313(C), an employee may be dismissed by a majority of a quorum of the school board.

did not discuss the merits of the case with any person prior to the deliberation of the school board on June 28, 1983. Based on the evidence in the record, the court rules that neither the fact-finding panel nor the school board was biased or improperly influenced. The court therefore awards summary judgment to the defendants on these issues.

C. Substantive Due Process Claims

Plaintiff alleges two substantive due process violations. First, he alleges that the evidence did not support the findings made by the fact-finding panel concerning plaintiff's conduct of his personal business and his performance as Chairman of the Minority Task Force, supra. Second, plaintiff alleges that the grounds cited by the school board, supra, do not constitute just cause under the law for his dismissal, which

was recommended by a majority the fact-finding panel and executed by a 6 to 0 vote of the school board.

In reviewing decisions of this kind, this court "may not usurp the discretionary power of the school board but must judge the constitutionality of its action on the basis of the facts which were before the Board and on its logic." Johnson v. Branch, 364 F.2d 177, 181 (4th Cir. 1966). Moreover, this limited review should be exercised by the court on a motion for summary judgment. As the court noted in Gwathmey v. Atkinson, 447 F. Supp. 1113, 1117 (1976):

If Plaintiff were entitled to a trial de novo, then of course there would be unresolved issues of fact remaining. But he is not so entitled. If this court were required to look beyond the purported reasons for the School Board's action, then again, perhaps, there would be issues of fact remaining. But neither is this required of us under the scrutiny appropriate herein.

Indeed, under the rule of Wood v. Strickland, 420 U.S. 308 (1975), all the plaintiff has standing to ask of the court here is to determine whether there was evidence before the school board supporting its decision.

In this case, a review of the administrative record refutes the plaintiff's allegation that the findings and recommendations of the fact-finding panel were not supported by evidence. In four days of hearings, the panel heard testimony from 24 witnesses and received 50 exhibits. This body of evidence provided ample support for the findings and recommendation of the panel. Indeed, the record clearly establishes that Mr. Lee regularly conducted his person business on county time, that he mixed his private business affairs with his public duties, and that he made some improper hiring

decisions as chairman of the Minority Task Force.

Plaintiff's allegation that the school board dismissed him without sufficient cause likewise fails. Virginia Code § 22.1-307 provides school boards with broad discretion in dismissing employees:

Teachers may be dismissed or placed on probation for incompetency, immorality, noncompliance with school laws and regulations, disability as shown by competent medical evidence, conviction of a felony or a crime of moral turpitude, or other good and just cause. (Emphasis added).

In dismissing the plaintiff on the grounds that he "intermix[ed] his private business affairs and his public responsibilities to the serious detriment of the school system, and ... improperly hire[d] and place[d] at least one teacher in his position as Chairman of the Special Task Force for Minority Hiring which greatly endangered the success of that

program," the school board acted well within the limits of its discretion and had ample evidentiary support for its action.

D. Racial Discrimination Claim

In his second amended complaint, plaintiff added an allegation of racial discrimination. Claims of racial discrimination brought pursuant to 42 U.S.C. §§ 1981 and 1983 require proof of intentional discrimination. Washington v. Davis, 426 U.S. 229 (1976); General Building Contractors Ass'n v. Penn, 458 U.S. 375 (1982). In this case, the plaintiff has offered no specific facts demonstrating discriminatory intent, alleging only that he was treated differently from white employees, that he was replaced by a white employee, and that he was dismissed solely because of his race. If this matter were before the court upon a simple motion to dismiss,

the appropriate course of action would be to dismiss this court without prejudice. Here, however, the motion has been converted to a motion for summary judgment, and the defendants have offered to the court affidavits from a majority of the school board, swearing that they based their decision to dismiss the plaintiff solely upon the record, findings and recommendations produced by the fact finding panel. Likewise, the defendants have submitted affidavits from a majority of the fact finding panel, swearing that they based their findings and recommendations solely upon the evidence presented to the panel. As noted earlier, this record provided an ample basis for dismissing the plaintiff, and this basis was a non-discriminatory one. In contrast to the defendants, the plaintiff has offered no materials to support his

bare allegation of racial discrimination. The court therefore finds no genuine issue of material fact remains with respect to the issue of racial discrimination, and awards summary judgment to the defendants on this issue.

E. \$1985 Claim and Pendent Claims

In addition to his \$1981 and \$1983 claims, plaintiff alleges that defendants Feggans, Gaines, Scott, Gutierrez, and Lewis, jointly and severally performed acts and made statements which were maliciously or intentionally calculated to influence adversely the public, the fact-finding panel, and the school board. Plaintiff specifically charges that defendants Feggans, Gaines and Scott were responsible for the story in the September 22, 1982, edition of the Daily Progress which reported that Scott had felt pressured to rent a substandard apartment from the plaintiff because

of his role in hiring her; that defendant Gutierrez made prejudicial statements to the press and that he improperly influenced one or more of the members of the fact-finding panel; and that defendant Lewis falsely testified about the plaintiff's hiring of W. T. Holmes. Plaintiff's memorandum in response to the motion to dismiss characterizes this portion of the complaint as a §1985 (3) claim. Although §1985 is mentioned nowhere in the complaint, the Court will accept this characterization and treat the allegations accordingly.

It is now well established that §1985 (3) applies only to racial or other class-based invidious discrimination. Griffin v. Breckenridge, 403 U.S. 88, 102, (1971); United Bhd. of Carpenters & Joiners of America, Local 610 v. Scott, 463, U.S. 825, 834 (1983), reh'g denied, 464 U.S. 875 (1983).

Here, however, the plaintiff has failed to allege any racial or other class-based discrimination on the part of defendants Feggans, Gaines, Scott, Gutierrez, and Lewis, four of whom, like the plaintiff, are black. In fact, the only allegation of racial discrimination in the complaint is plaintiff's claim that he was dismissed from his position solely because of his race, which would be a violation of Title VII. Even if this employment discrimination claim were to embrace all five of the purported conspirators,³ it would still provide no basis for a § 1985 claim, for the Supreme Court has held that § 1985 (3) may not be invoked to redress violations of Title VII. Great American Federal Savings

³ Only superintendent Gutierrez and board member Feggans might be reached by such a claim. Defendants Scott, Gaines and Lewis had no hiring or firing authority over the plaintiff's position.

& Loan v. Novotny, 442 U.S. 336 (1979). Because plaintiff has failed to allege any racial discrimination outside of a Title VII violation, and has failed to offer any evidence of racial discrimination on the part of the defendants Feggans, Scott, Gaines, Gutierrez and Lewis, the court will award summary judgment to the defendants on this issue.

With respect to the pendent claims of defamation and tortious interference with contract which formed the substance of the conspiracy claim, defendants have properly supported their motion for summary judgment with affidavits. In response, plaintiff has failed to set forth specific facts that show a genuine issue exists. Rule 56(e) of the Federal Rules of Civil Procedure states:

When a motion for summary judgment is made and support as provided in this rule, an adverse party may not rest upon the mere allegationsd or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Because plaintiff has failed to make the required showing, the court will award summary judgment on the pendent claims to the defendants.

The Court having awarded summary judgment on all claims to the defendants, the case will be dismissed and stricken from the docket. An appropriate Order shall this day issue.

ENTERED: JAMES H. MICHAEL, JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

OTIS L. LEE,
Plaintiff

v.

THE ALBEMARLE COUNTY SCHOOL
BOARD, et al.,
Defendants

CIVIL ACTION NO. 84-0038-C

JUDGE JAMES H. MICHAEL, JR.

O R D E R

For the reasons stated in open
court on December 20, 1984, it is this
day

ADJUDGED AND ORDERED

as follows:

1. The defendants' motion to dismiss
shall be, and it hereby is, denied.

2. The defendants' motion for
summary judgment shall be, and it hereby
is, denied.

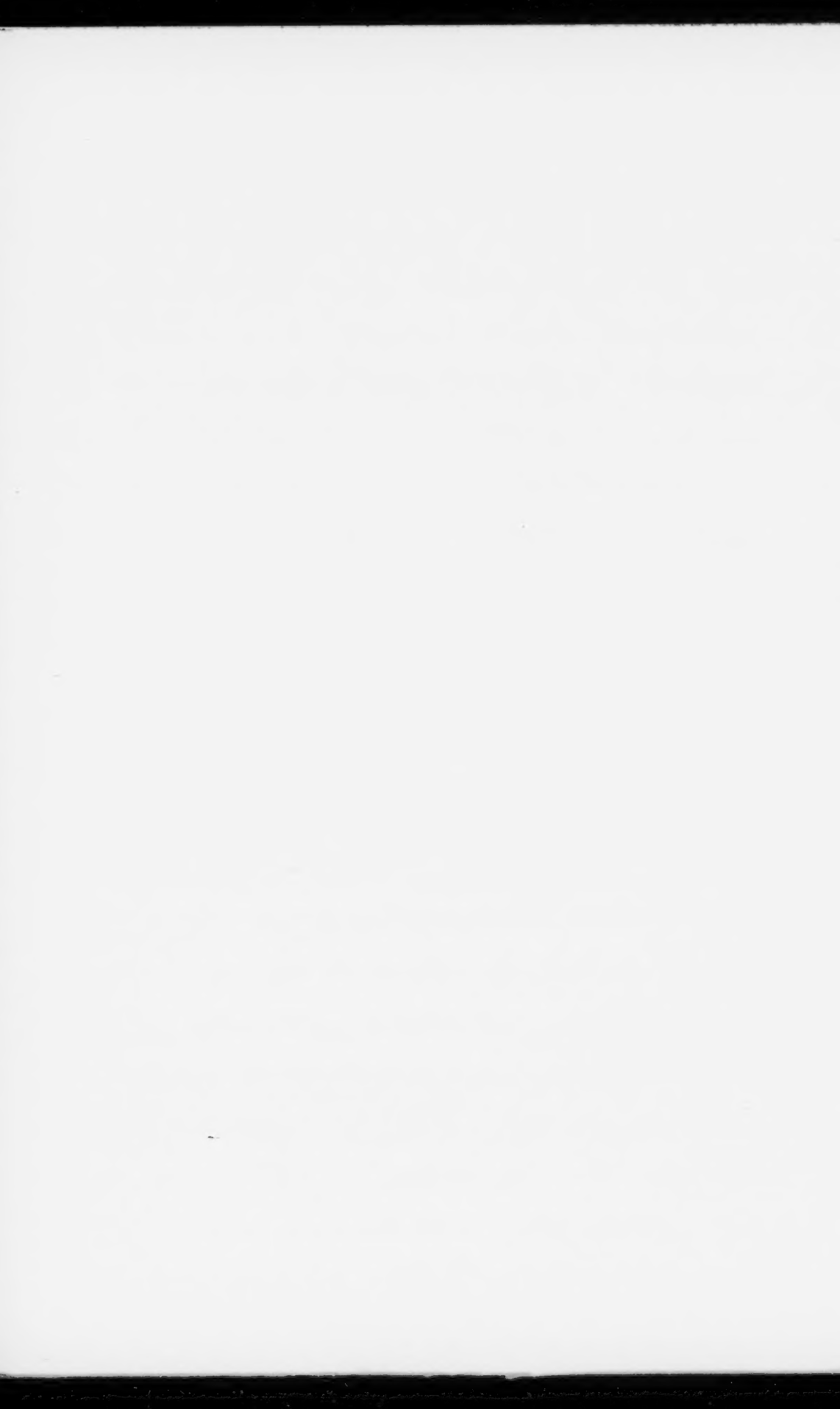
3. By agreement of counsel and
with the concurrence of the court, the

defendants shall not be required to answer to original complaint. Plaintiff shall file his amended complaint on or before January 31, 1985. The defendants shall answer to amended complaint within thirty (30) days of the date it is filed.

The Clerk is hereby directed to send a certified copy of this Order to all counsel of record.

ENTERED: JAMES H. MICHAEL, JR.

DATE: JANUARY 11, 1985



APPENDIX B



Otis L. Lee, Grievant

v.

Carlos E. Gutierrez, Division
Superintendent of Albemarle
County Schools

FACT FINDING OPINION

After consideration the transcript of the proceedings, the exhibits produced and thoughtful and detailed briefs provided by the parties, a majority of the fact-finding panel finds that the issues dispositive of the case are:

1. The management of the Minority Task Force by Mr. Lee as chairman; and

2. The propriety of conducting personal business affairs during normal working hours.

Based on the evidence when considered as whole, a majority of the panel finds as a fact that:

While the Minority Task Force was generally successful, Otis Lee exercised independent judgment as chairman of

the Minority Task Force which was inconsistent with the proper functioning of the Task Force and its goals.

Based on the evidence when considered as a whole, the panel unanimously finds as facts that:

1. Otis Lee conducted personal business on a regular basis during the course of his employment as Administrative Assistant to the Superintendent of the Albemarle County School Division which constituted a conflict with his official duties.

2. The personal business activities which were conducted during working hours occurred over a period of time, were not concealed by Otis Lee, were to a greater or lesser degree known to officials in the Albemarle County School Division and were not specifically addressed as they occurred.

RECOMMENDATION

A majority of the panel finds that these actions are grounds for dismissal under the law. The remaining member of the panel feels that certain of Mr. Lee's actions were improper but not sufficient to warrant dismissal and since the actions developed and occurred over a period of time, were to a greater or lesser degree known to officials in the Albemarle County School Division and were not specifically addressed as they occurred, recommends that Otis Lee be suspended for 90 days without pay and that during these 90 days Otis Lee effectuate his retirement.

Respectfully submitted,

Christine N. Garrison
Ella C. May
David Craig Landin

COUNTY OF ALBEMARLE
Department of Education
401 McIntire Road
Charlottesville, VA 22901

June 29, 1983

Mr. Otis L. Lee
Leonard-Belle Heights
1876 Woodberry Road
Charlottesville, VA 22901

Dear Mr. Lee:

By a vote of six to zero, the Albemarle County School Board passed the following motion at its meeting on June 28, 1983:

Having read the complete transcript of the Fact-Finding Hearing in the Otis L. Lee grievance procedure, and having considered the recommendations of the Fact-Finding Panel, the Board has determined:

- That Mr. Lee did intermix his private business affairs and his public responsibilities to the serious detriment of the school system, and
- That Mr. Lee did improperly hire and place at least one teacher in his position as Chairman of the Special Task Force for Minority Hiring which greatly endangered the success of that program.

The Board accepts the recommendation of the majority of the Fact-Finding

Panel and does hereby dismiss Mr.
Lee.

Please consider this letter the
Albemarle County School Board's written
decision in this matter.

Sincerely,

Charlotte C. Self
Clerk, School Board

Portions of Deposition of Ella C. May,
Fact Finding Panel Member, Dated September
13, 1984.

(E. May on Direct by Mr. Buchanan)

Q. Well, once the evidence was in, during the course of deliberations, did either say that he or she knew how he or she had to vote?

A. A statement was made, and I cannot quote verbatim, but the meaning of the statement was - this was Mrs. Garrison - David, you've got to help me, my job is riding on this, or this - in other words, what it was saying was that, my job is related to this.

Q. What is your impression of whether or not Mr. Lee was treated fairly by the fact-finding panel?

A. Well, I guess about the biggest thing there would be the fact that I didn't agree with what was done, or what was said. That would - would be self-evident; if I didn't agree with it, then I didn't think it was fair. Because I was trying to judge what I thought was fair. So I mean, that - that's a question that each person brings his own value to. So, in that I didn't agree, I didn't think the decision was a fair one.

Q. Ms. May, were you aware of any social relationship between Mrs. Garrison's family and the family of Mr. Landin?

- A. Not during the time of deliberation, no.
- Q. Did you subsequently become aware of any social relationship between the two mentioned families?
- A. When everything was just about over Mrs. Garrison made the remark that she played tennis with Mr. Landin's wife.
- Q. He [Mr. Landin] changed his vote from what to what?
- A. He had been voting with me, and when it came back the last time, and I began to read; I said, oh, you've changed everything. I said, you've even changed your vote, and he said, that's right.
- Q. So before he changed his vote is it your impression that he was not going to vote for dismissal?
- A. Yes, it was. Because he had voted the same thing I had voted all the way through. And when he first agreed with me, Mrs. Garrison asked him; said, can you agree with that? He said, yes, for the time being I - I - I can - I can agree with what she's saying. So since there was no change, I assumed that the final draft would be like all the rest had been on that issue, but it had been changed. And so many things had been changed, until it kind of upset me.

Portion of Deposition of Christine N.
Garrison, Fact Finding Panel Member,
Dated September 14, 1983.

(C. Garrison on Direct by Mr. Dick)

Q. What was said in your visit to the school systems before you learned that you were going to be a panel member?

A. I can't remember any specifics, frankly. I mean people were distressed by just the notoriety and the - and having things in the paper; what do you think about it; what do you think it means; what do you know from central office; and I simply - I was so new, lots of times I'd say, I don't know anything. I just know basically what we all know from the paper.

Q. You said the lot of them were upset with the notoriety of it?

A. Well, I think anybody would be.

Portions of Deposition of Superintendent
Carlos Y. Gutierrez Dated September
17, 1984.

(C. Gutierrez on Direct by Mr. Dick.)

Q. All right. As far as Mr. Lee being on the Task Force, why did you choose him as chairman?

A. Because he was the senior black administrator and employee of the division, and I can recall having some discussion with the School Board about that, and it was my feeling that he deserved, I guess, for want of a better word, the right to operate in that position.

Q. And was it because he'd had a history of dealing with the black problems of the school system?

A. No. That's not why I chose him. I chose him because of what I just said, he was the senior ranking administrative officer.

Q. Were you aware that he was intimately involved in the integration of Albemarle County Schools?

A. No.

Q. Were you aware that he hired black teachers under Superintendent Gail's administration?

A. I guess I knew that he - he was known as a recruiter among the black colleges in the south, specifically

North Carolina and Virginia, yes. I knew that. He'd gone out on a number of recruiting trips.

Q. Were you aware that he boarded black teachers, during the early years of integration, in his house?

A. No.

Q. Okay. In designing the parameters of the Minority Task Force, was it your decision or the Board's decision, that the Task Force would hire solely black teachers?

A. That was - that was the primary focus, because black teachers certainly were the focus because the allegations had been that "black teachers will not come to Albemarle County", and I did not agree with that, so that was the - that was the - purpose of the Task Force. Now, if the Task Force, in their interviews at the various campuses, found competent teachers of any color or any sex, they certainly were free to hire those people, but the focus was on hiring black teachers.

Q. In recommending to the Board who would be hired, were they not all black teachers who were recommended?

A. As I recall, they were, yes.

Q. Are you aware that [Mr. T. Lewis] testified on two occasions that Mr. Lee had the final authority on approving the black minority hirees to the Board?

A. Well, I wasn't aware of anything that he's testified, but I know that that's true, that Mr. Lee did have the final authority.

Q. While you're on that, can you tell us why it wasn't? I can assume I know why, but would you tell us why it was not the most popular - politically popular project? [The Minority Task Force to hire only black teachers.]

A. Well, in my opinion there's a there's a - great amount of latent racism still in existence in our organization.

Q. Did that surprise you?

A. Yes. I suppose that was my naivete, coming from a different part of the country.

Q. Was that something that you learned about as you arrived or something someone warned you about before you arrived?

A. No one warned me.

Q. Okay. You learned about it from day-to-day?

A. That's right.

(con't)

A. Theoretically; in actuality there were some problems there.

Q. In what regard? Was Mr. Hurlburt

opposed to just hiring minorities alone in the Task Force?

A. I had the feeling that my appointing of this Task Force was an affront to those who had had responsibilities for hiring in the past, and I had the feeling there were some professional jealousies or differences of opinion about that.

Q. How much resistance did you experience on the Minority Task Force?

A. Very little until the placement actually began to occur, and when it did, I experienced resistance.

Q. Was that squabbles between the committee and the chairman, mostly? Could it be identified ...

A. No, I'm referring to the - to the placing of teachers in specific schools. Certain principals would call and say, I have this person I'd prefer to hire, and I'd say, well, I'm sorry, but that person is going to be placed there. I would back the Task Force on its placement recommendations.

Q. Okay. This was part of the minority hiring.

A. Yes.

Q. ... concept?

A. Yes.

MR. JONES: Excuse me, Gentlemen, I must depart.

Q. So, it was the goal of the Minority Task Force to place the minority-task hiree without regard to the school principal's input?

A. It wasn't the goal to work in opposition of the principal. Inasmuch as possible, we had hoped that there could - it could be done cooperatively. This - this was a weakness in the plan, as I conceived it or actually as it was implemented, and that is that there was unanticipated strife that occurred regarding that procedure between Mr. Lee as Chairman and Tom Hurlburt, who was the Assistant Superintendent, who previously had done all the hiring. Now, I had talked with Mr. Hurlburt, and I had asked that all - all placements in all hiring be under his general supervision. He and Otis both knew that. Tom and Otis both knew that. And but in actual working out, it didn't work that way, and Tom would find himself besieged by complaints from principals, and he would - there was some problem there. So the - what I'm saying is that the in retrospect, I probably should have been more clear in - in stating the rules as to how this would be done before the process began.

Q. Did you present the Minority Task Force recommendation yourself, or did Mr. Lee present it to the Board?

A. As is common practice in my operation, I call on individuals to make presentations to the Board indicating

that presentation or that endorse - that has my endorsement, and who actually made the presentation, I believe Mr. Lee did. I didn't.

Q. All right. When Mr. Lee made the presentation, he was there on your authority, is that correct?

A. Yes.

Q. All right. Were you present when he made the presentation?

A. I'm - I think I've made all Board meetings since I've been here.

Q. All right. Do you recall whether any Board member questioned Mr. Lee as to the people that he was recommending and his committee?

A. There was some discussion about certification areas; not about the individuals, but about certification areas. Rumors were circulating at that time that - that not - you see, in the first round, these people had to be hired by the Board before they were actually placed in the particular positions, and there was some concern on the part of the Board that we may have employees whom we couldn't place. That discussion did occur, I believe, in the very first round.

Q. All right. And were there efforts made between the Board, and Administration, and the Committee, to rectify any of those problems?

A. Oh, yes. We worked on it throughout

the entire spring, and came down at the end of the process to a few - a handful of problems out of a total of thirty-some teachers hired.

Q. Were you satisfied at that time with the resolution of those problems?

A. I would have been more satisfied if we'd been able to get them placed in the appropriate certification area, and - but, yes, in general I thought it was a successful project.

(con't)

A. September 22nd, this - this is the article that appeared during my absence at a superintendents' conference in Roanoke. I came back and had a number of back issues of the paper to read. I had not seen this article prior to receiving a call from the president of the School Board. And she [Chairman of the School Board] informed me of the article and was, I might say, hopping mad about the whole thing.

Q. Was that ...

A. I calmed her down, told her that I needed time to read it, get some information, and as I recall, she and I had words. I said, this is an administrative matter. The Board does not belong involved at this time - in so many words, "stay out of it, I'll take care of it and report it to you".

Q. Did you receive calls from other Board members about it?

A. I did, the following day. This is the 22nd, a Wednesday.

Q. How would you describe ...

A. I would guess that the conference would have been Wednesday and Thursday, and I returned on Thursday night, so it would have been a day after the fact that I would have seen this.

Q. How would you describe their conferences with you on the phone about the article? Were they as excited as Mrs. Haden, the Chairman of the Board?

A. They were embarrassed that the school division would be called to the public attention through something like this. I can't, again, put myself into their minds, but they certainly were upset.

Portions of Affidavit of Otis L. Lee in opposition to the motion for summary judgment.

I, Otis L. Lee, do swear to the truth of the following and ask for a trial to restore my job, my name, and my constitutional rights.

1) I was a tenured teacher, principal and administrator in the Albemarle County School System for 23 years and an educator in the profession for 36 years.

2) In the 23 years with the Albemarle County School System, I was never placed on probation, suspension nor did I receive any letter of reprimand.

3) Superintendents under whom I served, Paul Cale, Clarence McClure, Leslie Walton, and Carlos Gutierrez, all knew that I had outside property interests including being a landlord and that from time to time I would attend

to that business and I have not in any way done anything in outside interests to seriously jeopardize or cause a detriment to the School System. Miss Scott, Mrs. Gaines and Mr. Feggans put a news story in the paper that was not true and that news article on their efforts was a serious detriment by their efforts not mine.

4) I know that other school officials have outside property interests besides me, yet I am the only one now, and I say because I am black, that has had this sort of travesty inflicted on me.

a) John Biller present principal of Walton School, has outside property interests. In fact, he sold a piece of property to the School Board adjacent to Stoney Point Elementary School.

b) Mary Chamberlain was a real estate salesman, she being a elementary supervisor in Central Office and she showed a Mr. Clarence Kee a house belonging to one of the other central office staff during school hours.

c) Mr. Charlie Simmons' secretary in 1978 or 1979 get her real estate license while she was in the Central Office and was selling real estate from her central office position. She later left and joined Roy Wheeler.

d) Joe Bingler, coach at Albemarle County High School has a real estate license and he sells real estate.

e) Clarence McClure, as assistant Superintendent and Clifton McClure who was his brother sitting on the School Board owned rental real estate and Clarence McClure took care of those matters during the school days. He continued that as Superintendent.

f) Elizabeth Bailey who is principal at Murray Elementary School had rental units. She rented to teachers from time to time.

g) Fulton Marshall, principal at Greer School, had rental property. I think he rented to teachers also although I'm not as certain.

It was no secret in the school what any of us did in the way of outside interest or employment. Over 50% of our teachers have second jobs and Dr. Gutierrez admitted that in his deposition.

5) Clarence McClure knew from

time to time that I received calls from my tenants in the office or people called looking for housing. It was never excessively done and it was never concealed. It was an excepted fact.

6) Carlos Gutierrez knew as he testified that from time to time I would receive calls, need to go to the Court, and although I don't recall anyone coming to see me while at work, Dr. Gutierrez testified that he saw people come into my office looking for me and yet he never complained to me about it if it did happen. His office was right next to mine at his insistence. Dr. Gutierrez took an interest in my outside activity. We socialize together and we would talk about all of those things. He never once complained.

7) My office was to have been with Tom Hurlburt to work on personnel and Carlos Gutierrez moved me next to

him from where I was originally assigned in the new County Office Building plans. He said he did this because I was going to head up his idea of a Minority Task Force Hiring group to hire exclusively black teachers which I did.

8) Not one Superintendent whom I served under ever reprimanded me for pursuing these outside interests and largely so because my quality of performance never became unacceptable to any Superintendent.

9) It was a customary practice around Central Office to have outside interests all of these years. As an Administrator, I was allowed great leeway in using my time. That was no secret either as long as I got my job done. There were many hours I spend outside of school hours doing school work.

10) My dismissal was a total shock but not as much a shock and demoralizing

feeling as having the School System level their false charges in the Daily Progress continuously before I even had a chance to have the benefit of presenting my side, the truthful side, to the Superintendent, and the Board muchless the Panel. No one ever bothered to talk with me on the matter. I read it all in the papers and was the victim of a smear campaign.

11) It is clear to me now that my tenured job was wrongfully taken from me in violation of my constitutional rights, my professional reputation, and that these people have placed a horrendous stigma on me in my home community that I do not deserve. I can only vindicate myself before an impartial Court. My job is gone.

12) My work as Chairman of the Minority Task Force was openly accepted in a public hearing by the Superintendent

and the School Board on May 10, 1982. The Harriet Scott press matter was the only excuse they had to attack the Minority Task Force after it had been accepted by the Board and I was commended by the Superintendent including a very favorable evaluation in his letter to me that we had been successful.

13) I have never been a immoral school official, nor an incompetent one as I was accused of, nor do I know today how the School System can support such a false charge in view of their acceptance of my work and the congratulations that I received. Thus I firmly believe that only hatred and bad faith motives support the School Board's dismissal action that evolved from the named people in this suit. The Board itself was biased and the reasons they gave to dismiss are vague and cannot point to one thing to support

their decision.

Given under my hand this 15th day
of November, 1984.

OTIS L. LEE

Testimony of Otis L. Lee at grievance panel hearing.

(Otis L. Lee response.)

A. ... I said, Harriet, I have an apartment if you want it. I'll be happy to show it to you when you get here and you can make that decision. So, she asked me how much was it and I told her two hundred fifty dollars a month and there had to be a two hundred and fifty dollar deposit on it if she wanted it. So, she said, okay and then she assured me she was going to be here Sunday and I believe that was all.

Q. After you spoke with her on the telephone on Friday afternoon which would have been the 17th of September, 1982 did you have a conversation with Carolyn Gaines?

A. Yes, after I hung up from Harriet, before I left the office I called Carolyn Gaines' house and asked her if Harriet had contacted her.

Q. In your initial conversation with Miss Scott you gave her Carolyn Gaines' telephone number?

A. Yes, I gave her the telephone number.

Q. And you requested that she, Harriet Scott, contact the principal, Carolyn Gaines?

A. Yes.



APPENDIX C

Virginia Code §22.1-307, Dismissal,
etc., of teacher; grounds.

Teachers may be dismissed or placed on probation for incompetency, immorality, noncompliance with school laws and regulations, disability as shown by competent medical evidence, conviction of a felony or a crime of moral turpitude or other good and just cause. (Code 1950, §22-217.5; 1968, c. 691; 1975, c. 308; 1980, c. 559.)

Virginia Code §22.1-302, Written contracts required; execution of contracts; rules and regulations.

A written contract, in a form prescribed by the Board of Education, shall be made by the school board with each teacher employed by it, except those temporarily employed as substitute teachers, before such teacher enters

upon his duties. Such contract shall be signed in duplicate, with a copy thereof furnished to both parties. (Code 1950, §22-217.2; 1968, c. 691; 1980, c. 559.)

Portion of Virginia Code §22.1-304, Reemployment of teacher who has not achieved continuing contract status; effect of continuing contract; resignation of teacher; reduction in number of teachers.

If a teacher who has not achieved continuing contract status received notice of reemployment, he must accept or reject in writing within fifteen days of receipt of such notice. Except as provided in §22.1-305, written notice of nonrenewal of the contract must be given by the school board on or before April fifteenth of each year. If no such notice is given a teacher by April

fifteenth, the teacher shall be entitled to a contract for the ensuing year in accordance with local salary stipulations including increments.

Teachers employed after completing the probationary period shall be entitled to continuing contracts during good behavior and competent service and prior to the age at which they are eligible or required to retire except as hereinafter provided. Written notice of noncontinuation of the contract by either party must be given by April fifteenth of each year; otherwise the contract continues in effect for the ensuing year in conformity with local salary stipulations including increments.

A teacher may resign after April fifteenth of any school year with the approval of the local school board. The teacher shall request release from

contract at least two weeks in advance of intended date of resignation. Such request shall be in writing and shall set forth the cause of resignation.

In the event that the board declines to grant the request for release on the grounds of sufficient or unjustifiable cause, and the teacher breaches such contract, the certificate of the teacher may be revoked under regulations prescribed by the Board of Education.

As soon after April fifteenth, as the school budget shall have been approved by the appropriating body, the school board shall furnish each teacher a statement confirming continuation of employment setting forth assignment and salary.

Nothing in the continuing contract shall be construed to authorize the school board to contract for any financial

obligation beyond the period for which funds have been made available with which to meet such obligation.

A school board may reduce the number of teachers, whether or not such teachers have reached continuing contract status, because of decrease in enrollment or abolition of particular subjects. (Code 1950, §22-217.4; 1968, c. 691; 1978, c. 147; 1979, c. 98; 1980, c. 559.)

APPENDIX D

The Daily Progress

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CHARLOTTESVILLE, VA.

WEDNESDAY, OCTOBER 6, 1982

School Official Dismissed

By JULIE YOUNG
of The Progress Staff

Otis L. Lee has been fired as administrative assistant in the Albemarle County school system's central office.

Superintendent Carlos Gutierrez confirmed today that "a dismissal action against Mr. Lee has been taken."

Under grievance procedures outlined in the state code, Lee has 15 days to request documentation of the charges that brought about his dismissal. Gutierrez refused to be specific about the nature of those charges.

Lee was suspended Sept. 25 after a teacher he had hired told The Daily Progress that she felt pressured by Lee to rent an apartment that he owned. Harriet Scott, whom Lee hired Sept. 17, said she had feared that turning down Lee's offer might jeopardize her new job at Yancey Elementary School.

At its Sept. 28 meeting, the Albemarle County School Board followed Gutierrez' recommendation and extended Lee's suspension which, under school board policy, could have been continued for up to 60 days.

Gutierrez said at the time that he wanted to conduct an "intensive investigation" into conflict of interest, misuse of public trust, and other charges against Lee.

Lee, 60, had been an employee of the Albemarle County School System for 22 years.

A native of Fitzgerald, Ga., Lee is a graduate of Fort Valley (Ga.) State College and holds a master's degree in school administration and supervision from Virginia State College.

He came to Albemarle County in 1960 after teaching in Georgia

schools for five years and serving as a principal in the Louisa County school system for eight years.

Lee served for six years as principal of the Virginia L. Murray School in Ivy. He became supervisor of records and reports in the central administration in 1966.

In 1967, Lee was named assistant principal at Henley Junior High School, a position he held until he became principal of McIntire School three years later.

After his tenure at McIntire, Lee was named principal at Walton Middle School, where his administrative ability and disciplinary judgment came under criticism from Walton parents and teachers.

His position as administrative assistant for personnel and administration was created for him in 1977 after he was relieved of the Walton Middle School principalship.

He became administrative assistant to the superintendent in 1981. Lee's primary duty of late had been the heading of a minority recruitment task force, which was appointed by Gutierrez.

The task force makes recruiting trips and conducts on-campus interviews at predominantly black colleges to screen potential minority applicants for teaching positions.

Miss Scott was one of the applicants Lee interviewed last February on a recruiting trip to Bennett College in Greensboro, N.C.



Lee



The Daily Progress

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CHARLOTTESVILLE, VA.

WEDNESDAY, SEPTEMBER 22, 1982

Teacher Felt Pressured To Rent

By JULIE YOUNG
of The Progress Staff

A teacher hired last week by a high-ranking Albemarle County school official who also owns rental property in the city said Tuesday that she rented one of his houses sight unseen because she feared it would jeopardize her job if she turned down his offer.

Upon seeing the house, which she since been cited for two city code violations, the teacher, Harriet Scott, refused to move in because she considers it substandard.

Otis L. Lee, administrative assistant in the central office of the Albemarle County Schools, leased the housing to Miss Scott after he offered her a first-grade teaching job at Yancey Elementary School last Friday.

"I signed the lease because I had no other choice. I was put in a corner and I don't think I can live here," Miss Scott said.

A city citation issued Tuesday

said Lee improperly used a single family dwelling as a two-unit apartment. City housing inspector Jerry Tomlin said Lee was given 15 days to correct the violations or 10 days to appeal the citation.

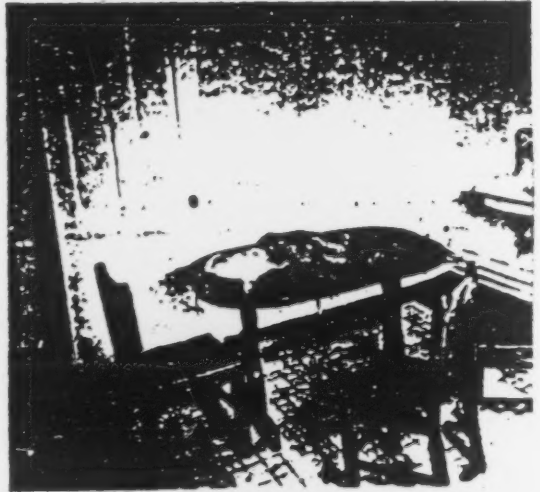
Lee said today that he "thought I was doing Miss Scott's favor, I was just trying to befriend her." Lee said he did not pressure Miss Scott to take the apartment, "but we were just trying to help find the lady a place to live."

"We have tried to help teachers relocate here and have found them many places over the years," Lee said. "I have shown that very apartment to others, and they didn't want it, which was OK. Miss Scott didn't have to take it. I told her that repeatedly."

"Mr. Lee didn't tell me he would help me find a place to live, he told me he had found me a place to live," Miss Scott said in an interview Tuesday.

"I was amazed that someone

Please See LEE, Page A16



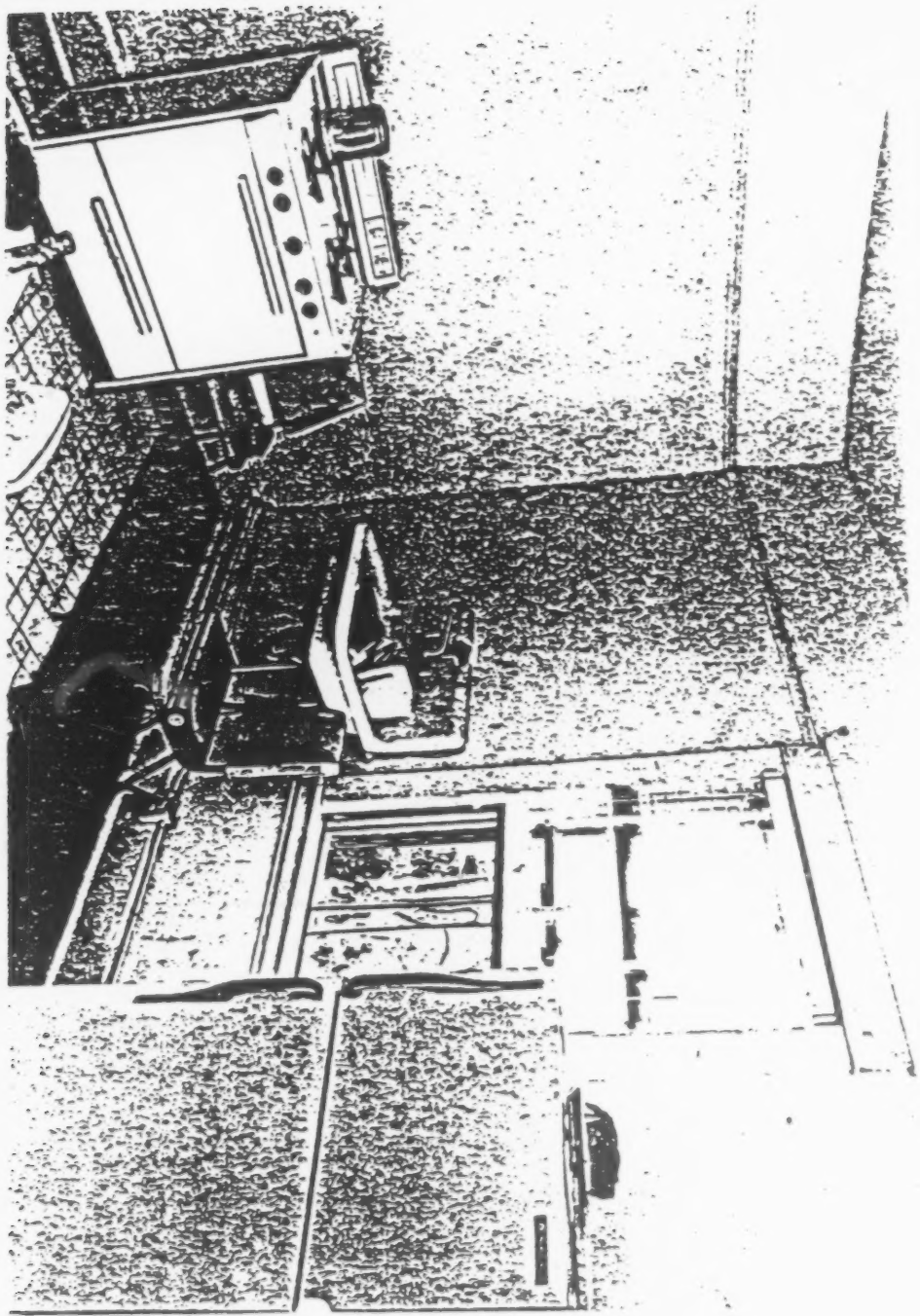
KITCHEN OF HOUSE OTIS L. LEE RENTED TO NEWLY HIRED TEACHER
Teacher Rented House From School Official Sight Unseen

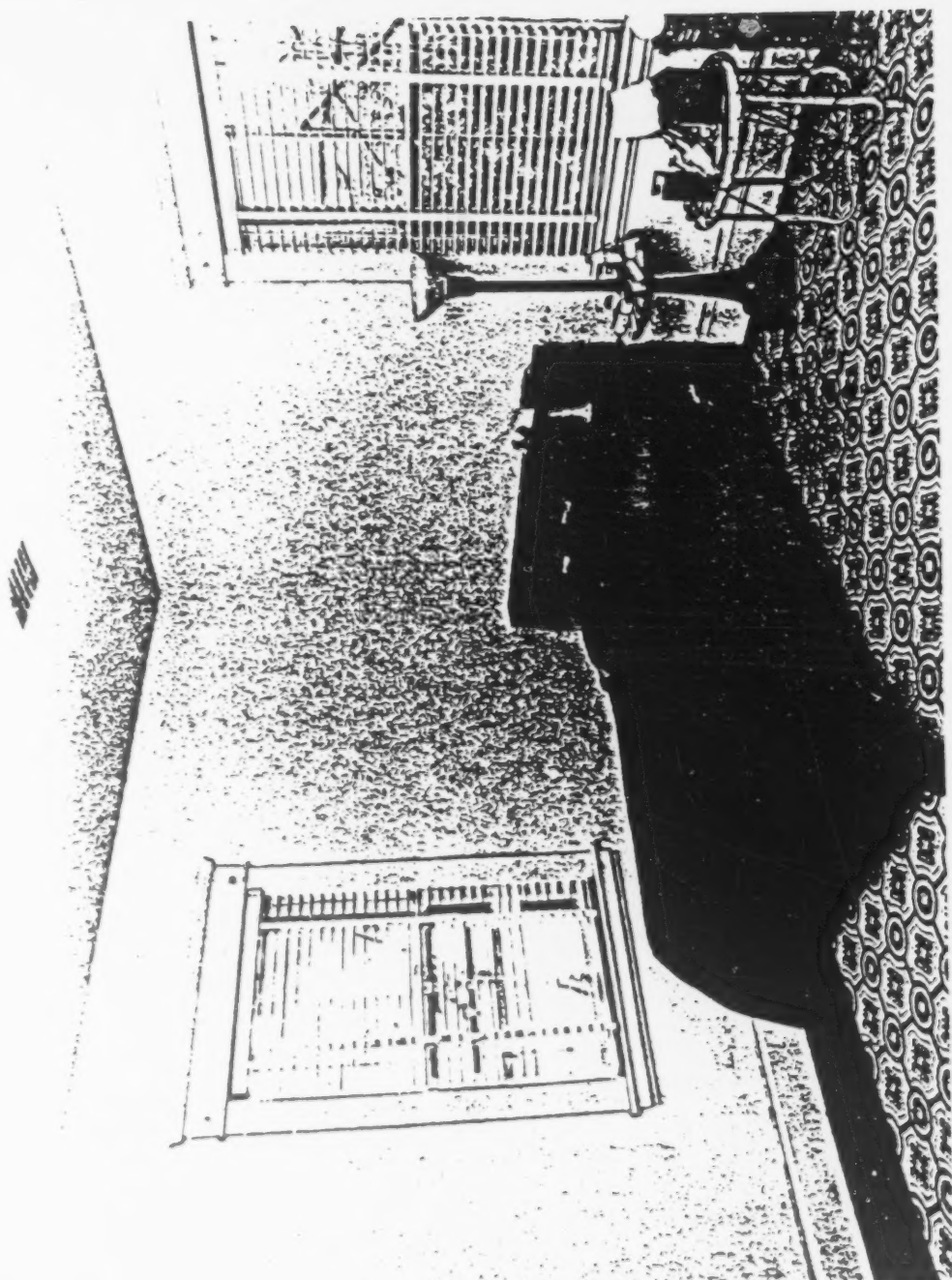
KITCHEN OF HOUSE OTIS L. LEE RENTED TO NEWLY HIRED TEACHER Teacher Rented House From School Official Sight Unseen

NOTE: ("Sight Unseen" is False)

Miss Scott inspected the apartment pursuant to sworn testimony for nearly an hour with relatives before signing with Mr. Lee on a non-school day. The area is where a refrigerator and stove would go. The apartment was a two bedroom apartment (see building next pages).







The Daily Progress

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School Official Probed On Conflict of Interest 9/24!

By JULIE YOUNG
of The Progress Staff

Albemarle County School Superintendent Carlos Gutierrez said today that he is investigating Otis L. Lee, his administrative assistant, for a possible conflict-of-interest violation and misuse of public trust.

Gutierrez said he "intends to act on the matter very, very shortly."

The Daily Progress reported Wednesday that a newly hired teacher at Yancey Elementary School in the county felt pressured by Lee to rent an apartment that he owned.

"I have responded to the story and I'm looking into the matter of misuse of public office on behalf of one of my administrators," Gutierrez said.

"I have interviewed the teacher, her mother, the principal (at Yancey) and Mr. Lee. My staff and I are in the process of investigating the entire matter and will make a public statement this afternoon."

Gutierrez said that several angles are being investigated. "There is the aspect of conflict of

interest, doing business with an employee. There is the allegation that a public officer implied that there was a connection between a teaching job and renting an apartment. And there are other angles," he said. "I'm not just going to sweep this under the rug. I take the allegations very, very seriously. I'm conducting an intensive investigation, and I do intend to act very, very shortly."

The teacher, Harriet Scott, told The Daily Progress Wednesday that Lee told her an apartment had "already been found" for her when he called last Friday to offer her a first grade teaching position. Miss Scott had not seen the apartment until she arrived in Charlottesville on Saturday.

Upon seeing the house, Miss Scott said that she could not live in it because she considered it substandard. She has not stayed in the upstairs apartment since she signed the lease Saturday.

Miss Scott said she was afraid that turning down Lee's offer of housing might jeopardize her new job. She also said she was under

Please See PROBE, Page A10

★ Probe

Continued From Page A1

the impression that the school system or school board had found her a place to live.

The house, which was cited for two city code violations Wednesday, "should have been condemned," said Peggy Scott, Miss

Scott's mother, who has stayed in Charlottesville with her daughter since she helped her move from Greensboro, N.C.

Lee said Wednesday that he "thought I was doing Miss Scott a favor." He also said that the two violations — not having a separate entrance or a proper kitchen for the upstairs apartment — were corrected two hours after he received the citation.

Lee said today that he has refunded Miss Scott's deposit and first month's rent — a total of \$500 — and voided the lease.

"If she'll look in her mailbox, there is a letter and a check in there right now. I have cut off our relationship," he said.

"I wrote her a nice letter and told her to have a nice year and to let me know if I could be of assistance to her later on," Lee said.

★ Official

Continued From Page A1

said Friday that he had refunded Miss Scott's deposit and first month's rent — a total of \$500.

Before coming to the central office of Albemarle County Schools, Lee was principal of the county's McIntire School.

A graduate of Fort Valley (Ga.) State College, Lee taught in Georgia for five years and in Louisiana County for eight years before coming to Albemarle County.

The Albemarle County Schools administrative assistant earned his masters degree from Virginia State College.

Lee was principal of the Virginia L. Murray School in Ivy from 1960 to 1966 when he became supervisor of records and reports in the central administration.

He was named assistant principal at Henley Junior High School in 1967, a position he held until he became McIntire School principal.